

MASS.
DOCS.
OLL.

The Commonwealth of Massachusetts

RECEIVED
MASS. STATE ARCHIVES
AMHERST, MASS.

Annual Report

OF THE

Department of Public Utilities

FOR THE

Year Ending November 30, 1930

COMMISSIONERS' REPORT



PUBLICATION OF THIS DOCUMENT APPROVED BY THE COMMISSION ON ADMINISTRATION AND FINANCE.

500. 3-'31. Order 1695.

DEPARTMENT OF PUBLIC UTILITIES

State House, Boston, January 21, 1931.

ANNUAL REPORT

To the Honorable Senate and House of Representatives in General Court assembled:

We respectfully submit the eleventh annual report of the Department of Public Utilities for the fiscal year ended November 30, 1930.

The number of corporations, private and municipal, persons, firms and associations under the jurisdiction of and filing annual returns with the Department is as follows:

Steam railroad companies	26
Street railway companies	37
Telephone companies	17
Telegraph companies	5
Steamboat companies	3
Sleeping car companies	1
Express companies	14
Gas companies	53
Electric companies	56
Water companies	52
Motor bus lines	70
Municipal lighting plants	43
Manufacturing and other companies doing an electric business ...	5
Voluntary associations	30
Total	412

During the year the Department held 430 formal hearings and many informal hearings or conferences. The following tabulation, showing the number of petitions and complaints filed and the number of investigations made, indicates the volume of work requiring the Department's attention during the fiscal year:

Petitions: Railroad, 96; street railway, 47; telephone and telegraph, 3; gas, 34; electric, 70; water, 16; sale of securities, 9; motor bus lines, 105; total, 380.

Special Investigations: Railroad, 2; street railway, 1; telephone and telegraph, none; gas and electric, 3; sale of securities, 1; smoke abatement, 5; motor bus lines, 1; total, 13.

Applications for Special Permits: Railroad, 76; street railway, 5; motor bus lines, 3; gas and electric, 4; water, 1; total, 89.

Complaints: Railroad, 225; street railway, 62; motor bus lines, 147; telephone and telegraph, 930; gas, 60; electric, 143; water, 10; sale of securities, 1,264; smoke abatement, 146; total, 2,987.

Tariff or Schedule Filings: Railroads, freight service, 940; passenger service, 268; street railways, 14; express, 42; telephone, 11; motor bus lines, 11; electric, 200; gas, 117; water, 19; total, 1,622.

RAILROADS

The railroads operating in the Commonwealth have, during the last year, felt the effects of the depression in business. Notwithstanding the adverse conditions, however, The New York, New Haven and Hartford Railroad Company has met its dividend requirements of 6 per cent on its common stock, and the Boston and Maine Railroad will earn its present dividend rate of 4 per cent on its common stock.

The service on the railroads has, during the last year, been substantially maintained, and steps are now being taken for co-operative operation between the New York, New Haven and Hartford Railroad and the Boston and Maine Railroad, by which it is proposed, where it can be done without impairment of the service, to consolidate terminal facilities and the through operation of engines and trains. It is expected by the railroads that this co-operative arrangement will result in economies and in the improvement of the freight service.

The committee appointed by the New England governors to investigate the railroad situation, in so far as it affects New England, has not yet made their report.

GRADE CROSSING ABOLITION

Under the provisions of chapter 417 of the Acts of 1930, expediting and regulating the abolition of grade crossings, a new procedure has been initiated and developed which constitutes a very forward step towards an efficient and economical method of abolishing grade crossings in the Commonwealth. Pursuant to the requirements of this statute the Department of Public Works, on October 1, filed with this Department a list of thirty-two grade crossings located at various points in the state, the abolition of which it suggested for early consideration. Our duty under the new law is to determine the order of priority in which the elimination of the grade crossings included in the list shall be undertaken. Public hearings have been held on this matter and views taken of a number of the crossings. A determination of the order of priority will be made by the Department at an early date.

The following table shows the number of persons killed and injured at railroad grade crossings during the past year:

Accidents at Grade Crossings during the Year ended November 30, 1930

RAILROADS	PROTECTED CROSSINGS				UNPROTECTED CROSSINGS			
	Num- ber	Killed	In- jured	Ratio of Acci- dents	Num- ber	Killed	In- jured	Ratio of Acci- dents
Boston & Albany	64	2	2	1-32	122	-	-	-
Boston & Maine	461	8	2	1-46	220	2	6	1-27
Boston, Revere Beach & Lynn	11	-	-	-	-	-	-	-
Hoosac Tunnel & Wilmington	-	-	-	-	2	-	-	-
Central Vermont	6	-	-	-	40	-	1	1-40
New York, New Haven & Hartford	425	7	7	1-30	290	2	15	1-17
Fore River	3	-	-	-	-	-	-	-
Total	970	17	9	1-37	674	4	22	1-26

STREET RAILWAYS

The serious conditions with which our street railways have been confronted for a number of years have been aggravated by the general business depression of the past year, especially in the industrial centers of the state. Two of our larger systems are being operated under receiverships. Notwithstanding the establishment in past years of generally higher rates of fare, the effecting of economies of operation in an effort more evenly to balance income and expenses, the abandonment of unprofitable trolley lines and the establishment and extension of numerous bus routes, street railways have been unable to increase net earnings from a steadily decreasing patronage. It is difficult to predict whether the use of facilities afforded by street railways will increase sufficiently, with the return of normal commercial and industrial conditions, to offset the loss of patronage due to the steadily increasing use of the automobile for private transportation.

CHARLES STREET STATION

Under chapter 444 of the Acts of 1924, provision was made for the construction and use of an additional station in connection with the Cambridge subway at or near the junction of Cambridge and Charles streets in the city of Boston.

In the course of the preparation of plans and specifications the Department was of the opinion that provision for the accommodation of longer trains should be made at the time of the construction of the station and if that were done a larger appropriation than that authorized by the act would be required to build the station. A bill was introduced in the legislature to accomplish this result but it failed of passage. In the meantime no further action had been taken with respect to the construction of the station. Recently, however, the City of Boston has acquired land and is laying out a traffic circle at this point and it is now pos-

sible to construct a station at a cost much less than that contemplated in the act. A general plan of the station has been completed, public hearings have been held and a contract has been executed with the Boston Elevated Railway Company for the use of the station when constructed.

MOTOR BUS TRANSPORTATION

There are 97 motor bus lines operating in various parts of the state under certificates of public convenience and necessity granted by the Department, including those operated by street railway companies and by subsidiaries of railroad corporations, an increase of 5 over those operated during the preceding year. The total number of certificates granted during the past year was 151. These were issued to 28 different companies and covered mainly additions to or extensions of existing routes of present licensees.

The earnings of the bus lines have also been seriously affected by a loss of patronage due to the use of automobiles and to the general industrial depression.

Chapter 38, Resolves of 1930, directed the Department to prepare and submit to the General Court on or before December 15, 1930, a revision and codification of the laws affecting motor vehicles carrying passengers for hire, not including taxi cabs, and in connection therewith to consider the expediency of additional legislation relating thereto. A public hearing was held on this matter and a report thereon has been submitted to the legislature in accordance with the provisions of the resolve (Printed as House No. 201).

TELEPHONES

Many modifications of rates and charges have been made during the year, representing reductions to telephone subscribers in Massachusetts of approximately \$410,000 a year. Extensions of base rate areas have been made in 35 cities and towns in the state, which will afford relief to a large number of subscribers.

During the past year dial service has been installed in Worcester and Spencer, and present plans provide for a change to dial service in Pittsfield, Rockport, Millbury, Williamsburg and Cotuit in 1931. With the completion of the new telephone building at Bowdoin Square, Boston, the Haymarket and Richmond exchanges will be changed over to dial service.

GAS, ELECTRIC AND WATER COMPANIES

Notwithstanding a substantial loss in the sale to large users of electricity for power and other purposes during the past year, as a result of the current business depression, the loss thus sustained has been largely offset by an increase in the use of electricity for general household purposes. The electric companies, therefore, have had a prosperous year and have been able to make substantial improvements and additions to their properties.

In many cases reductions of rates have been made by companies either voluntarily or through action of the Department.

The gas companies, while not as prosperous as the electric companies, have been able to increase the types of use of gas. Some companies, like the Worcester Gas Light Company and the Boston Consolidated Gas Company, by the use of high pressure systems, have been able to supply territory hitherto without gas, through long distance extensions.

During the past year, 99,365 gas meters have been inspected and 529 examinations made of gas quality and the income received from fees amounted to \$25,604.50. Some electric meters were also tested.

Under the order of the General Court directing the Department to ascertain what service or other charges were made by gas and electric companies, a report on the subject matter of the order was submitted on May 22, 1930.

The Western Massachusetts Electric Company and Thorndike Company (a water company) violated the law requiring the filing of an annual return with the Department within the time prescribed by law.

MUNICIPAL LIGHTING PLANTS

We set forth a list of the municipal gas and electric plants which, from reports filed in 1930 for the year 1929, appear to have violated the provisions of the statute

requiring them to reduce their rates, when the plants have earned a profit in excess of the eight per cent allowed by law.

Belmont	14.96%	North Attleborough	10.37%
Concord	8.07%	Peabody	19.79%
Groveland	8.03%	Shrewsbury	9.29%
Hudson	8.68%	South Hadley	8.02%
Merrimac	17.13%	Wellesley	10.05%

The Southwick municipal lighting plant also violated the law by failing to file its annual return within the limit prescribed by law.

SECURITIES DIVISION

Mr. John C. Hull, of Leominster, was appointed Director of the Securities Division established by chapter 287, Acts of 1929, and assumed the duties of his office on May 8, 1930. Pursuant to the provisions of this chapter the Commission, on May 9, 1930, adopted an order determining what functions imposed upon the Commission in relation to the administration and enforcement of the Sale of Securities act should thereafter be performed by the Securities Division.

In 1930, a total of 5,481 salesmen and 899 brokers were registered. Fees for such registrations received and paid to the treasurer of the commonwealth amounted to \$55,912. A total of 167 new applications for registration as brokers were allowed and 23 such applications were denied. Including members of firms, the total number denied was 109. A total of 1,695 applications for new registration as salesmen were allowed and 52 such applications were denied. The sale in this commonwealth, during the year 1930, of securities of corporations, trusts, associations or other bodies, having an aggregate par value of \$150,413,600, has been forbidden by the Commission or by the Securities Division. Since the effective date of the Sale of Securities act (August 26, 1921) up to November 30, 1930, the proposed sale of securities of corporations, trusts, associations or other bodies, having an aggregate par value of \$2,277,218,644, has been prohibited. Thirty-five formal hearings were held by the Commission or by the Director of the division during the past year on complaints arising in connection with sales of securities or the manner in which brokers or salesmen conducted their business. The registration of 12 brokers and 279 salesmen was cancelled on the register by orders of the Commission or of the Director. The registration of 6 brokers and 100 salesmen was cancelled pursuant to their request. In connection with the registration of brokers and salesmen under the act, 1,938 investigations were made.

Chapter 56, Resolves of 1930, provided for a survey and study by the Department of the laws relative to the promotion and sale of securities. A public hearing was held and the findings and recommendations of the Department with relation to the subject matter of the resolve, together with a draft of legislation to carry its recommendations into effect (See Appendix B), are included in this annual report.

SMOKE INSPECTION

Mr. David A. Chapman, of Brookline, was appointed Director of the Division of Smoke Inspection established by chapter 380, Acts of 1930, and assumed the duties of his office on September 1, 1930. Pursuant to the provisions of this chapter the Commission adopted an order determining what functions imposed upon the Commission relative to the administration and enforcement of the act providing for the abatement of smoke in the district defined by chapter 651, Acts of 1910, as amended by chapter 301, Acts of 1928, should thereafter be performed by the Division of Smoke Inspection.

The following summary shows the work done by this Division for the year ending November 30, 1930:

<i>Recorded observations:</i>	<i>1930</i>
Stationary stacks	115,878
Locomotive stacks	41,327
Marine stacks	2,924
Total	160,129

Observations recorded showing the emission of smoke in excess of the amount allowed by the act:	1930
Stationary stacks	917
Locomotive stacks	34
Marine stacks	64
Total	1,015
Percentage of observations in which emissions of smoke in excess of the amount allowed by the act were found:	
Stationary stacks	0.79
Locomotive stacks	0.08
Marine stacks	2.19
Recorded observations of stationary stacks emitting smoke in excess of the amount allowed by the act, due to the carelessness of those immediately responsible for their operation	436
Recorded observations of stationary stacks emitting smoke in excess of the amount allowed by the act, due to overloading the plant	15
Recorded observations of stationary stacks emitting smoke in excess of the amount allowed by the act, due to the fuel situation	—
Recorded observations of stationary stacks emitting smoke in excess of the amount allowed by the act, burning fuel oil	325
Recorded observations of stationary stacks emitting smoke in excess of the amount allowed by the act, burning powdered coal	2
Total	778
<i>Stationary stacks upon which recorded observations have been made may be classified as follows:</i>	
Public Service	177
Manufacturing plants	1,221
Office buildings	1,249
Residences	14
Total	2,661
Stationary stacks upon which recorded observations showed smoke emitted in excess of the amount allowed by the act may be classified as follows:	
Public Service	33
Manufacturing plants	244
Office buildings	218
Residences	—
Total	495
Number of stacks found after first notice or visit of an inspector to have ceased emitting smoke in excess of the amount allowed by the act	241
Additional number of stacks so found after further notice or visits	180
Number of stacks from which the emission of smoke contrary to the requirements of the act has been observed and had not ceased at the close of the year:	
Public Service	—
Manufacturing plants	1
Office buildings	—
Total	1

CAPITAL STOCK AND BONDS

Thirty-four applications for approval of an issue of stock, bonds or notes have been decided during the year which ended November 30, 1930. The par value of the securities approved was \$15,464,375.

The following table shows the securities approved by the Department for the several companies applying therefor, giving both the par value of the capital stock and the issue price thereof, determined as required by law:

Company	CAPITAL STOCK APPROVED			Bonds approved at Par	Date
	Amount at Par	Issue Price	Value at Issue Price		
Abington & Rockland, The Electric Light & Power Company of	\$236,250	\$25. 00	\$236,250	-	Nov. 21
Adams Gas Light Company	160,000	165. 00	264,000	-	Jan. 10
Agawain Electric Company, The	20,000	100. 00	20,000	-	Mar. 25
Amherst Gas Company	75,000	100. 00	75,000	-	Feb. 14
Amherst Water Company	-	-	-	\$50,000	May 29
Amherst Water Company ¹	100,000	100. 00	100,000	-	Nov. 26
Attleboro Gas Light Company	29,000	150. 00	43,500	-	Apr. 11
Barnstable Water Company	35,000	100. 00	35,000	-	July 25
Boston Elevated Railway	-	-	-	1,200,000	May 14
Boston, Revere Beach & Lynn Railroad Company	265,200	100. 00	265,200	-	Dec. 13
Boston Terminal Company	-	-	-	1,500,000	July 2
Citizens' Gas, Electric & Power Company	150,000	100. 00	150,000	-	June 12
Cottage City Water Company	-	-	-	90,000	May 28
Deerfield River Electric	50,000	25. 00	50,000	-	April 7
Gardner Electric Light Company	250,000	133. 33	333,325	-	Oct. 17
Greenfield Electric Light & Power Company	480,000	125. 00	600,000	-	Feb. 28
Holliston Water Company	-	-	-	50,000	June 25
Lee Electric Company	60,000	150. 00	90,000	-	April 18
Ludlow Electric Light Company	16,000	125. 00	20,000	-	Mar. 24
Marion Gas Company	1,250	25. 00	1,250	-	July 30
Milford Gas Light Company	92,600	100. 00	92,600	-	June 26
North Attleboro Gas Company	1,000	100. 00	1,000	-	Jan. 31
North Attleboro Gas Company ²	136,200	100. 00	136,200	-	Mar. 14
New England Power Company	1,333,325	30. 00	1,599,990	-	June 27
Old Colony Gas Company	200,000	25. 00	200,000	-	Feb. 28
Old Colony Railroad	-	-	-	1,250,000	July 11
Quincy Electric Light Company	116,050	70. 00	324,940	-	July 31
United Electric Light Company	537,500	70. 00	1,505,000	-	May 8
Turners Falls Power & Electric Company	1,000,000	150. 00	1,500,000	-	Mar. 12
Western Counties Electric Company ³	120,000	50. 00	120,000	-	Mar. 21
Western Counties Electric Company ⁴	75,000	50. 00	75,000	-	July 2
Western Counties Electric Company ⁵	480,000	50. 00	480,000	-	Feb. 21
Worcester Consolidated Street Railway Company ⁶	-	-	-	500,000	July 25
Worcester Consolidated Street Railway Company ⁶	-	-	-	4,805,000	July 25
	\$6,019,375	-	\$8,318,255	\$9,445,000	-

¹ Preferred Stock.

² Issued to purchase North Attleboro Gas Light Company.

³ To purchase electric department of the Easthampton Gas Company.

⁴ To purchase the Hampshire Electric Company.

⁵ To purchase electric department of the Amherst Gas Company.

⁶ Bonds matured and extended.

LEGISLATION RECOMMENDED

At the suggestion of the Director of the Division of Smoke Inspection, we recommend three amendments to chapter 651 of the Acts of 1910, as amended. The purpose of these amendments is, first, to place an additional restraint on the emission of smoke from stacks defined under said act as falling under Class II. The present act authorizes a greater emission of dense smoke by stacks falling under Class II than from those falling under either Class I or Class III, as defined by the act. We know of no sound reason why this should be so. The second amendment makes provision to give the department a greater latitude in the service of an order made by it under the provisions of the act. At present it is provided that the service must be made within twenty-four hours of the order. It occurs at times that the provision is difficult to comply with, if not impossible. Consequently, it is suggested that the provision for service within twenty-four hours be eliminated, and a provision that the service shall be made as soon as practicable be inserted in place thereof. The third amendment is to make the emission of

smoke a criminal offense after service of the order instead of after the order, as at present. We herewith submit a bill to carry out the recommendation. (See Appendix A.)

Except for recommendations for legislation which the department makes in response to chapter 38 of the Resolves of 1930, providing that the department shall prepare and submit to the general court a revision and modification of the laws affecting motor vehicles carrying passengers for hire, and to chapter 56 of the Resolves of 1930, providing for a survey and study by the department of the laws of the Commonwealth relating to the promotion and sale of securities, the department makes no recommendations for legislation during the current year. However, under this subject we think we ought to state that we are still of the opinion that chapter 379 of the Acts of 1929, entitled "An Act concerning Municipal Lighting Plants and the Powers of the Department of Public Utilities relating Thereto," does not meet with the entire approval of the department. We feel it would have been much better if the act as it originally passed the House had been enacted into law. In its present form doubtful questions of law may arise, and in some situations it will be found unworkable. We have, however, felt it impolitic this year to suggest amendments to meet our views, as the subject has been considered by the Legislature for two successive years, and our views have not met with full approval. We are also influenced in our attitude by the feeling that, with the slight chance of approval of our views, it is unwise to press them in this time of financial depression. Time, we think, will vindicate our views in relation to this act, and we believe that the objectionable provisions thereof will then be corrected. Accordingly, we submit no bill to amend said chapter 379.

SALE OF SECURITIES ACT

The Legislature, in 1930, by Chapter 56 of the Resolves of that year, called upon the Department to make a survey and study of the laws of the Commonwealth relating to the promotion and sale of securities, with a view to the revision, codification and simplification of those laws and the making of other improvements therein. The language of the Resolve is as follows:

"Resolved, That the department of public utilities make a survey and study of the laws of the commonwealth regulating or otherwise pertaining to the promotion and sale of securities with a view to the revision, codification and simplification of said laws and the making of any other improvements therein that may seem advisable. The department shall hold hearings, may call upon the attorney general and all other departments, commissions and officers of the commonwealth for such information as may be helpful in the course of its study and survey and may, for the purpose of ascertaining to what extent, if any, the provisions of said laws do not sufficiently regulate the promotion and sale of securities, require, by summons, the attendance and testimony of witnesses and the production of books and papers relating to any matter within the scope of this resolve, and may administer oaths to witnesses testifying before it. The department may expend, with the approval of the governor and council, for the purposes of this resolve such sums, not exceeding, in the aggregate, five thousand dollars, as may hereafter be appropriated. It shall include in its annual report to the general court its findings and recommendations with relation to the subject matter of this resolve, together with drafts of legislation necessary to carry its recommendation into effect."

The Department held, on July 15, 1930, a public hearing upon the subject matter of this Resolve; and has made a survey and study of the laws and of their practical working in administration. The results of this survey and study are reported in a draft of legislation entitled, "An Act in Amendment and Revision of the Sale of Securities Act," which draft is annexed hereto. (See Appendix B.)

Pursuant to the authority of the resolve, the Department deemed it best to procure special assistance; and employed Melville F. Weston, Esq., of Boston, who has assisted the Department in the somewhat extensive labors required of it in this connection.

A review of the experience of the Department over the nearly ten years in which the Sale of Securities Act has been in force, showed the present law to be far from satisfactory in form and expression. Bearing in mind the instructions of the resolve, the Act has been subjected to thorough and even minute textual study and the revision presented herewith is for the most part a rearrangement, simplification and clarification to the end that redundant language may be omitted and the provisions of law set forth in a more simple and logical order, with the elimination of such inconsistencies and ambiguities as experience has disclosed.

The changes in form, order and expression, which make no substantial change in the law, are numerous and we think it unnecessary to refer to them in detail. There may also be some slight changes in substance, of a perfecting nature, to which no especial attention need be directed. We call to your attention the following changes, additions and eliminations, which seem to us important. These fall under nine heads.

1. *Par value.* The definition of "par value" found in section 2 (h) of the present law has been omitted. This term was used elsewhere in the act only in that portion of section 3 (d) which was eliminated by Statute 1930, Ch. 316 relating to securities issued by certain holding corporations; and had no remaining significance except possibly in connection with the exemption under section 3 (i). As to the latter provision, it was felt best to confine the exemption of securities of Massachusetts corporations having a capital stock (plus other outstanding securities) of not over twenty-five thousand dollars, to the simple and unequivocal case of corporations having only par value stock. This is accomplished in section 4 (h) of the draft and there is therefore no further occasion for a definition of "par value."

2. *Exemptions.* In the present law exempt securities and sales are grouped together in confusion in section 3. In the draft they are separated and exemptions of types of sales are dealt with in section 3 while exemptions of types of securities are covered by section 4. The most significant change consists of rendering absolute the exemption of isolated sales and judicial sales; which, it is felt, cannot be subjected to the numerous restraints of the act without undue interference with elemental rights of property and the judicial process. All other exemptions of sales and all exemptions of securities are qualified by the right of the commission, for cause, to forbid sale notwithstanding the exemption.

Under section 3 (e) of the present law the commission is empowered to add to the exemption "sales or securities listed upon" any organized stock exchange. The commission has never added to the list of stock exchanges, feeling it unwise to delegate, in effect, to stock exchanges organized in other states, the power to determine what should be exempt securities. In section 4 (d) of the draft the commission is empowered to approve additional exchanges in Massachusetts only. Section 4 (i) of the draft, corresponding to section 3 (p) of the present Statute is deemed to confer sufficient power with respect to adding to the exemptions "other securities and classes of securities."

The change in the exemption in section 4 (h) of the draft has already been referred to above.

3. *Qualifying securities for sale.* In the present law securities sold in Massachusetts prior to July 1, 1921, are dealt with by section 4 while those sold only since that date are covered by section 5. Section 4 was designed to deal with the situation as it existed when the act first took effect, and is in part obsolete, as the six months period of grace allowed has never been extended. The distinction based upon July 1, 1921, is therefore eliminated in the draft.

4. *Registration of brokers and salesmen.* In practice, securities which, while not fraudulent, are essentially speculative in nature, are largely sold to people who ought least to buy them through the "high pressure" methods of a relatively small number of brokers and salesmen. These activities cannot be adequately restrained unless the commission has ample power to deal with the qualification of registrants. It is therefore expressly provided in section 9 of the draft that a registrant, applying for renewal, may for cause be required to demonstrate that he possesses the qualifications for original registration; and the commission is authorized to prescribe, by rules and regulations, what those requirements shall be, and also to grant limited and conditional registrations. This degree of control is felt to be

quite essential to the effective working of the act. The right given by the present law to a person registered prior to October 1, 1924, and continuously since, to renewal registration merely upon payment of the lawful fee, unless his registration has been revoked by the commission, is however preserved in the draft.

5. *Hearings by the commission.* In section 13 of the draft it is provided that at any hearing before a majority of the commission, any testimony previously taken by the commission may be introduced and may be shown by stenographic transcript. In view of the establishment of the securities division by Statute 1929, Ch. 287, the opportunity afforded persons for hearing before the division and rehearing before the commission, and the assimilating of the procedure upon court review to the procedure under G. L. Ch. 25, sec. 5, it is provided in section 13 of the draft that such court review be limited to issues of law.

6. *Circulars, pamphlets and advertisements.* Section 15 (b) of the draft, following section 11 (b) of the present law, forbids the reference in any stock selling literature to the fact that the provisions of the sale of securities act have been complied with. In addition, each circular, pamphlet and advertisement designed to promote the sale of the security (except governmental securities) is required by the draft to contain a prescribed statement to the effect that the merits of the security as an investment have not been passed upon by public authority. It is hoped that this will help to abate the common evil of having securities represented to gullible persons as in effect approved as investments by state authority.

7. *Sales at dwellings.* House to house solicitations of sales, by "high pressure salesmen," are calculated to reach the class of purchasers least able to guard their own interests and to leave such persons little or no escape from the activities of the salesman. Sales so made form a large portion of the subjects of complaints to the commission. Section 16 of the draft contains an entirely new provision, directed at this evil, and prohibiting sales at dwellings other than the dwelling of the seller. This does not, however, prevent the use of the telephone, telegraph, or mails.

8. *Avoidance of sales made in violation of this chapter.* By the last sentence of section 19 of the draft, an additional penalty for illegal sales is proposed in the form of an express provision giving a purchaser the option to treat such sale as void and to sue for the consideration paid.

9. *Investigation of complaints.* Section 11 (d) of the present law is as follows:

"The commission shall investigate all such complaints as to the sale of fraudulent securities or the fraudulent sale of securities or the violation of any of the provisions of this chapter, as shall be referred to it, and shall report such violations to the attorney-general if it considers the public interest so requires. The attorney-general shall report to the commission in writing on or before the first Wednesday of each year as to the disposition of all such cases so reported to him by the commission."

This provision is eliminated in the draft. We feel that the provision no longer serves any useful purpose, but, on the other hand, may be a cause of the failure to efficiently enforce the criminal provisions of the act. We have found a tendency upon the part of police and prosecuting officials to interpret this provision as relieving them from responsibility of such enforcement. Moreover, the Attorney General has expressed some misgivings as to the propriety of his taking any action for a criminal violation of the act until such violation is reported to him by the Commission.

It has been the view of this Department that it was not intended by the Legislature by this provision to relieve the police and the prosecuting officials from the responsibility of prosecuting those who have committed criminal acts, merely because such criminal acts related to the sale of securities, or were made criminal acts by the provision of the act. We believe that it was intended that the activities of the Department with respect to the sale of securities should primarily be devoted to those matters in which the Commission had the power itself to take relevant action. Of course it becomes the duty of the Department, in the administration of its functions, to bring to the attention of prosecuting officials any evidence of which it has knowledge which tends to indicate that a criminal act has been committed, and this the Department has made a practice of doing. If it is intended that the Department is to assume the burden of the prosecution of

the criminal violations of the provisions of the act, then its inspectors ought to be given the powers of police, and it will be necessary very materially to increase the force. This we think entirely unnecessary and unwise. Where the provisions of the act have been violated, and the violator has thereby subjected himself to a criminal penalty, the prosecution of such offense is of the simplest character. If he has sold a security not qualified under the act, and he is a registered broker or salesman, the matter usually comes upon complaint to the Department, and the Department, upon finding that he has committed the offence, revokes his registration and refers the evidence to the district attorney in the district in which the offence was committed. Where the offence is committed by one who is not registered as either a broker or salesman, the Department can take no affirmative action in relation to the matter, other than that which the prosecuting officials and police may take, namely, a prosecution in the criminal courts. Where such violations are brought to the attention of the Department it is the practice to notify the police in whose jurisdiction the act has taken place. The prosecution of such a violation is so simple that any policeman or prosecuting official ought to be able to prosecute the offence to a successful conclusion.

Moreover, section 7 of chapter 278 of the General Laws provides as follows:

“A defendant in a criminal prosecution, relying for his justification upon a license, appointment, admission to practice as an attorney at law, or authority, shall prove the same; and, until so proved, the presumption shall be that he is not so authorized.”

This provision was originally enacted in 1864. It was early passed upon by the Supreme Judicial Court. See *Commonwealth v. Kennedy*, 108 Mass. 292. The decision in that case has not since been modified. Under the statute as so interpreted, the burden is practically thrown upon the defendant who may be apprehended for selling securities in violation of the provisions of the act to prove that he was authorized to sell the securities. Where offences are committed in the pursuance of a sale of securities, which are crimes independent of this statute, no different problem presents itself than exists when the same offence is committed in the sale of property other than securities. Under this situation, in our judgment, it is unnecessary to establish or provide for any special police force to apprehend and prosecute those who sell securities in violation of the act. To remove any question that may be raised as to the power and duty of police to apprehend persons found violating the criminal provisions of the act, and their duty and the duty of prosecuting officials to prosecute such violators, we have left out of the submitted draft this provision.

Respectfully submitted,

HENRY C. ATTWILL,
EVERETT E. STONE,
HENRY G. WELLS,
LEONARD F. HARDY,
LEWIS GOLDBERG,
Commissioners.

Appendix A

AN ACT RELATIVE TO THE EMISSION OF SMOKE IN THE METROPOLITAN DISTRICT

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 1. Section two of chapter six hundred and fifty-one of the acts of nineteen hundred and ten is hereby amended by striking out, in the fourth, fifth and sixth lines of the first paragraph, the words “or of a degree equal to No. 3 of the chart or greater, for more than three minutes in any one hour from stacks of Class II;” and inserting in place thereof the words:—or of a degree equal to No. 2 of the chart or greater, for more than ten minutes in any one hour, but not exceeding during said ten minutes a degree equal to No. 3 of the chart or greater, for more than three minutes from stacks of Class II,—so as to read as follows:—

Section 2. The emission of smoke of a degree of darkness or density equal to No. 2 of the chart or greater, for more than six minutes in any one hour from

stacks of Class I; or of a degree equal to No. 2 of the chart or greater, for more than ten minutes in any one hour, but not exceeding during said ten minutes a degree equal to No. 3 of the chart or greater, for more than three minutes from stacks of Class II; or of a degree equal to No. 2 of the chart or greater, for more than twenty-five minutes in any one hour, but not exceeding during said twenty-five minutes a degree equal to No. 3 of the chart or greater for more than five minutes from stacks of Class III; or of a degree equal to No. 3 of the chart or greater for more than three minutes in any one hour from stacks of Class IV; for more than five minutes in any one hour from stacks of Class V; and for more than twenty seconds in any one period of five minutes from stacks of Class VI, is hereby prohibited.

Section 2. Section six of chapter six hundred and fifty-one of the acts of nineteen hundred and ten is hereby amended by striking out, in the fourteenth line, the words "within twenty-four hours" and inserting in place thereof the words:—as soon as is practicable,— so as to read as follows:—*Section 6.* The board shall have power, after notice and a hearing, to order any person or corporation having control of the operation of the stack, other than an employee, to stop or abate the emission of smoke in violation of this act. Such notice shall be in writing and may be served personally upon such person or corporation, or duly authorized agent by any person authorized by the board to make such service, and in the manner provided by the laws of the commonwealth for the service of writs returnable to the superior court. Such notice shall be served at least forty-eight hours before the time fixed for the hearing, and a copy of the order or decree of the board shall in like manner be served upon such person or corporation or duly authorized agent as soon as is practicable after the same shall be made by the board. In the event of violation, a copy of the observation made in accordance with section four shall be mailed within twenty-four hours to the person or corporation having control of the operation of the stack, and an additional copy shall be delivered upon the premises, as soon as is practicable, to the employee having charge of the stack, unless it is otherwise requested in writing by any such person or corporation.

Section 3. Section seven of chapter six hundred and fifty-one of the acts of nineteen hundred and ten is hereby amended by inserting after the word "board" in the second line thereof the words:—after service thereof upon him or it,—so as to read as follows:—*Section 7.* Any person or corporation violating any order of the board after service thereof upon him or it shall be guilty of a misdemeanor and may be punished by a fine of not less than ten nor more than fifty dollars for the first offence, and not less than twenty nor more than one hundred dollars for every succeeding offence. No person or corporation shall be deemed guilty in accordance herewith, unless the observations, used as evidence at the trial, shall be made as provided in section four. The superior court sitting in equity, on petition of the board or any person authorized by the board, shall have jurisdiction to restrain violations of this act during the prosecution of any proceeding at law for the enforcement of any order of the board.

Appendix B

AN ACT IN AMENDMENT AND REVISION OF THE SALE OF SECURITIES ACT

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 1. The General Laws are hereby amended by striking out chapter one hundred and ten A thereof, as amended, and inserting in place thereof the following:

CHAPTER 110A

Promotion and Sale of Securities

Section 1. This chapter may be cited as the Sale of Securities Act.

Section 2. The following terms shall, in this chapter, have the following meanings, unless the context otherwise requires:

(a) "Commission," the commission supervising and controlling the department of public utilities under chapter twenty-five and also, in so far as determined by the commission under section twelve A of said chapter, the securities division or its director, established by said section.

(b) "Person" shall include a natural person and every form of organization incorporated or unincorporated.

(c) "Security" shall include any evidence of indebtedness, stock, certificate under voting trust agreement, subscription or reorganization certificate, certificate in or under a profit sharing or participation agreement, oil, gas or mining lease or certificate of interest in or under the same, currency of a government other than the United States; and, in general, any certificate or instrument representing or secured by a legal or equitable interest in the capital, assets or property of, or representing indebtedness of, any person.

(d) "Sale," "sell," "selling" or "sold" shall include the issuance, transfer, agreement for transfer, exchange, pledge, hypothecation, mortgage in any form whether by transfer in trust or otherwise, of any security or interest therein; and any option, subscription or other contract, or solicitation, looking to a sale, or offer or attempt to sell in any form, whether spoken or written. The gift or delivery of any security with, or as a bonus on account of, the sale of any thing, shall be deemed a sale of such security.

(e) "Broker" shall include every person, other than a salesman, who in this commonwealth engages, as principal or agent, in the business of selling securities, whether issued by himself or by another.

(f) "Salesman" shall include every person employed, appointed or authorized by a broker to sell securities within this commonwealth.

(g) "Fraud" and "fraudulent" shall have their full meaning as applied or accepted in courts of law or equity, and shall also specifically include the following:— a misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact; a promise representation or prediction as to the future not made honestly and in good faith; an intentional failure to disclose a material fact; and the gaining, directly or indirectly, through the sale of any security, of an underwriting, promotion, selling or managing fee, commission or other profit so gross and exorbitant as to be unconscionable or any scheme, device or artifice to gain the same.

(h) "Renewal registration" shall mean a registration immediately succeeding the expiration of a prior registration, by way of renewal thereof.

(i) "Original registration" shall mean any registration other than a renewal registration, whether the person shall have at some time theretofore been registered or not.

(j) Wherever any act is forbidden or restrained, the prohibition or restraint shall apply to any agent; and to any principal, except where the act may be done by a registered broker and is done through a registered broker as agent.

Exempted Securities and Sales

Section 3. Except as hereinafter provided in this section, the prohibitions and restraints imposed by this chapter shall not apply to the following types of sales:—

(a) Any isolated sale; but this exemption shall not include a sale made in the course of repeated and successive transactions of a like character.

(b) Any judicial sale.

(c) Any sale, by a pledge holder or mortgagee, selling in the ordinary course of business, of a security pledged with him in good faith as security for a bona fide debt.

(d) Any sale by an executor, administrator, conservator, guardian, trustee, receiver or trustee in insolvency or bankruptcy, appointed by any court; or any sale by a corporation of its stock for a delinquent assessment made in accordance with law.

(e) The distribution by a corporation of its or other securities, whether as a stock dividend, distribution out of surplus, liquidating dividend or otherwise, to its own security holders or their assigns; the distribution of securities issued under a corporate reorganization or recapitalization by a corporation or corporations party thereto, entirely to its or their security holders or their assigns; or the sale by a corporation of its increased capital stock entirely to and among its stockholders or their assigns; provided in all cases that the same be done without payment of any promotion or underwriting fee, or payment of any salary, commission or expense to any broker or salesman, in connection therewith.

(f) The original issuance and sale by any corporation organized under the laws of this commonwealth of its capital stock at a time when the number of stockholders of said corporation does not, and will not in consequence of such sale, exceed twenty-five.

(g) Any sale of notes secured by mortgage of real or personal property, where the title to the entire security for said notes is sold and transferred therewith.

(h) Any sale of securities to a registered broker.

(i) Sales at public auction of securities not otherwise exempt, if the authority of the commission therefor has been obtained, and upon such conditions as the commission may prescribe.

(j) The commission may, in accordance with such rules, regulations, and upon such conditions and limitations as it may prescribe, exempt other sales and types of sales from the provisions of this chapter.

The commission may for cause forbid any sale exempted under the provisions of (c), (d), (e), (f), (g), (h), (i), and (j) of this section and such sale shall not thereafter be made except as the commission may determine.

Section 4. Except as otherwise provided in this chapter, the prohibitions and restraints imposed by this chapter shall not apply to the following types of securities:—

(a) Evidences of indebtedness absolutely maturing less than fourteen months from the date of issuance thereof and embodying no conversion privilege, option or other right to receive or duty to take any security or thing other than money in payment thereof.

(b) Any security issued or guaranteed as to principal or interest by a government or governmental agency or any public body having power of taxation or assessment.

(c) Securities of, or guaranteed as to principal, interest or dividend by, a corporation owning or operating a railroad or any other public service utility, the issue or guaranty of such securities being regulated or controlled or requiring approval by public officials of this or any other state or of the United States empowered to regulate, control or supervise public service utilities and the issue of securities thereby; and all securities of such public service utility corporation senior to a security thereof exempt as above.

(d) Securities listed upon any stock exchange in Massachusetts which had been doing business continuously for the last ten years prior to August 26, 1921, and upon any other stock exchange in Massachusetts thereafter or hereafter organized which the commission, for the purposes of this exemption, may approve, and all securities senior thereto. Any such stock exchange shall keep on file with the Commission the form or forms of application and the rules adopted by such exchange for the listing of securities, and the exemption hereby created shall continue only so long as such forms and rules shall be acceptable to the commission as indicating in substance that the requirements of such exchange are adequate to guard against fraud; provided, however, that any change in said form of application or rules shall not affect the exemption of securities listed before the adoption of such change, or of securities senior thereto.

(e) Securities which are a legal investment for any savings bank, savings department of any trust company, insurance company or association under the supervision of the commissioner of banks or of the commissioner of insurance of this commonwealth.

(f) Securities issued by and representing an interest in, or direct contract right against, any national bank or corporation created or existing by virtue of the acts of the congress of the United States; by any state bank, trust company, co-operative bank or credit union of this commonwealth or of any other state, where the same is fully organized and doing business under the supervision of the public official controlling banking in such state; or by any corporation under the supervision of the department of banking and insurance of this commonwealth, other than corporations licensed to make small loans.

(g) The securities of any corporation organized under the provisions of chapter one hundred and eighty.

(h) The securities of any corporation organized under the laws of this commonwealth whose authorized capital stock, added to its outstanding securities other

than capital stock, does not exceed twenty-five thousand dollars. This exemption shall not apply to the securities of a corporation having capital stock without par value.

(i) The commission may from time to time, by order, in accordance with such rules and standards as it may prescribe, upon petition or upon its own motion, add to the exemptions of this section other securities and classes of securities, such exemptions to run until otherwise ordered by the commission and to contain such other conditions and limitations, if any, as the commission may prescribe.

Section 5. No security, not exempt under section four, shall be sold, except as exempted by section three, within this commonwealth, until there shall have been filed with the commission a notice of intention to sell the security in question. Upon the filing of said notice, such security may be sold by any broker or salesman registered hereunder, except during such period or periods as such sale may be forbidden under or pursuant to other provisions of this chapter. Within seven days after the filing of said notice, or such further time as the commission may authorize in any case, there shall be filed with the commission a statement, upon such forms as the commission may prescribe, containing, with any other relevant information requested by the commission, the following information relative to the security and the person issuing the same.

(a) The name and address of the person; and, in the case of an organization, the names and addresses of the partners, trustees, directors or other board of management, president, treasurer, secretary, auditor or corresponding officers thereof.

(b) The state or other government, if the person be an organization, under the laws whereof such person was organized, and a reference to such laws.

(c) The general nature of the business transacted or to be transacted by such person, with, if the person be an organization having a written statement of purposes, a copy of such statement of purposes.

(d) The amount of capital devoted and proposed to be devoted to the business in question, with the number of and a classification of the securities issued and to be issued; the amount of the secured debt and the unsecured debt with a brief description of the date of issuance, maturities and character of such debt, and the security, if any, therefor; and the authorized amount of capital stock, certificates of beneficial interest or other securities of like character, with the number and classes of shares into which the same is divided and a brief description of the respective voting rights, preferences, rights to dividends or profits and rights to capital with respect to each class.

(e) The purposes to which the proceeds of the security proposed to be sold are to be applied.

The commission may accept, in lieu of such statement or of any part thereof, a reference to recognized sources of information selected by the commission and containing such information as it deems to be an adequate substitute therefor.

The notice of intention above prescribed may be filed by a person who proposes to sell the security or by the person issuing the security. The statement shall be filed by or in behalf of the person proposing to sell as principal, or the person issuing, the security and shall be dated and verified by the oath of such person, if an individual, or if an organization, by the oath of a majority of the partners, trustees, directors or other members of a managing board thereof, or of other officers or representatives expressly authorized by said managing officers to take such action.

Section 6. The commission shall make such investigation of any security, of which notice of intention to sell shall have been filed with it, as it may deem advisable, and if the information contained in the statement filed under the preceding section appears to it inadequate it may require the filing of such further information, including examinations and reports by reputable accountants, engineers and other experts, verified by oath as prescribed in section five, and also, as to such reports, by the oath of such expert, at the expense of the person or persons seeking to qualify the security for sale, as may in its judgment be necessary to enable it to determine whether the sale of such security would be fraudulent or would result in fraud. At any time after the filing of the notice of intention, and pending such determination, the commission may make an order forbidding the sale of such

security, which order shall remain in force until revoked by the commission. Such security shall not be sold while such order remains in effect.

Section 7. The commission may at any time require any person selling or issuing or proposing to sell or issue any security, of which notice of intention to sell shall have been filed, to file, periodically or otherwise, in such form as it may prescribe, further information showing the financial condition of such issuing person, with any other data deemed advisable by the commission, verified by oath as prescribed in section five, and, as to any financial statements, also by the oath of a reputable accountant. The commission may also require the filing of such full information concerning any security, whether or not exempted by section four, as it may deem necessary, and in the form and verified by the oath required under this and the two preceding sections.

Section 8. The failure to submit the statement required by section five, when due, or to submit any information required under section six or section seven within such reasonable time as the commission shall specify and any extension thereof by the commission, shall in the absence of satisfactory explanation be deemed prima facie evidence of fraud. Whenever the commission is of the opinion, from information disclosed or in its possession that the sale of any security, whether exempt under section four or not, is fraudulent or would result in fraud, it shall make a finding to that effect. Thereafter such security shall not be sold until, and except in accordance with, further action by the commission or by the court, as provided in this chapter.

Section 9. No person shall sell any security within this commonwealth, whether or not such security is exempt under section four, except as provided in section three and section fifteen A, unless he is registered as a broker or salesman by the commission. Registrations under this chapter shall expire on the thirty-first day of December in each year. Any person who was a registered broker or salesman on September 30, 1924, and has been continuously so registered since that date, shall be entitled to renewals, upon payment of the lawful fee, unless his registration be suspended or revoked by or pursuant to the provisions of this chapter. Any other registered broker or salesman who applies for a renewal fourteen days prior to the expiration of his registration shall be similarly entitled to a renewal except that the commission may, for cause, specifically require such person to demonstrate that he possesses the qualifications for original registration before he is registered. An applicant for original registration shall demonstrate to the reasonable satisfaction of the commission that he is of good moral character and of sufficient qualifications to engage in the business proposed. The commission may, by order, promulgate, and from time to time amend or revoke, rules and regulations prescribing the qualifications for registration. The commission may grant in specific cases registrations limited to the performance of specific work or otherwise especially conditioned. No person shall be entitled as of right to registration if he, or, in the case of an organization, any partner, trustee, director or other member of a board of management, or other officer thereof, has been convicted of a felony or of a violation of any provision of this chapter.

Section 10. An application for original registration shall state the applicant's name, residence, mailing address, and the place where the business is to be conducted; together with any other relevant information which the commission may prescribe. It shall be accompanied by a certificate of two citizens of the commonwealth that in their opinion the applicant is, or in case of an organization that the partners, trustees, directors and other officers or managing agents are, honest and of good repute. When required by the commission, an application for original registration as a salesman or for renewal thereof, shall also be accompanied by a photograph, of the type known as a passport photograph, of the applicant, which shall be retained permanently in the files of the department and become part of its records. An applicant for original registration shall furnish under oath such further relevant information as the commission may require. After registration the registered person shall in all instances promptly advise the commission in writing of any change of residence, mailing address, or place of doing business. No non-resident, not having a usual place of business in the commonwealth, shall be registered until he has filed with the commission a writing, in a form approved by the attorney-general, appointing the secretary of the commission to be his

true and lawful attorney upon whom all lawful process in any action or proceeding against him arising out of or connected with any act or acts done by him as such broker or salesman may be served, and agreeing that such process so served on said attorney shall be of the same legal force and validity as if in fact served upon him and that the said appointment and agreement shall remain in force so long as any such liability remains outstanding against him in this commonwealth.

The fee for each original registration and renewal registration shall be fifty dollars in case of a broker and two dollars in case of a salesman. Said fees shall be paid into the state treasury.

Section 11. No person, except as provided in section three, shall sell any security, whether exempt under section four or not, which is to be paid for upon an installment or partial payment plan unless the sale thereof under such plan has been approved by the commission.

Section 12. The commission may at any time require a registered broker or salesman to furnish under oath full information relative to his financial condition and the conduct of his business as a broker or salesman under his present or any prior registration. The failure to supply any information so required within such reasonable time as the commission shall specify and any extension thereof which may be given, shall, in the absence of satisfactory explanation, be deemed prima facie evidence of fraud. If it appears to the commission that any registrant is or has been conducting his business as broker or salesman in a fraudulent manner or in a manner which if continued would result in fraud or is or has been wilfully and purposely evading or seeking to nullify the provisions of this chapter, or has violated any provision of this chapter, whether under his present registration or prior thereto, the commission, upon notice to such registrant, may suspend or revoke his registration as broker or salesman or both. Upon such suspension or revocation, such registrant and any organization of which he is a partner, trustee, director or other member of a board of management, or officer shall not be regarded as registered unless and until such suspension or revocation shall have been modified or annulled by the commission or by the court, but the registration of such organization may be restored by the commission after hearing. Conviction of a felony or of a violation of any provisions of this chapter shall operate forthwith to revoke the registration of the convicted registrant and of any organization of which he may be a partner, trustee, director or other member of a board of management or officer. A registration of any organization so revoked by reason of such connection with the convicted registrant may be restored by the commission after hearing; a registration of the convicted person so revoked shall not be restored, but new application for original registration may be made subject, however, to all the provisions of this chapter.

Section 13. Any interested person aggrieved by any order or finding or refusal or failure to make an order or finding by the commission shall be entitled, upon filing a claim therefor in writing, to a public hearing before a majority of the members of the commission, at which he may be represented by counsel. At such hearing any evidence relevant to the subject matter involved in the proceedings, in which the commission made such order or finding or failed to make an order or finding, may be introduced. Any testimony which was previously taken by the commission relative thereto may be introduced and may be shown by a stenographic transcript thereof. When so requested by any such person, the commission shall rule upon any question of law properly arising in the course of such hearing. Any failure or refusal of the commission to rule upon such question within ten days after such request shall be taken and recorded as a ruling adverse to the person requesting the same. At the conclusion of such hearing, the commission shall reconsider and review the said subject matter and shall, within twenty days thereafter, affirm, modify or rescind the order or finding or refusal complained of. The supreme judicial and superior courts shall have jurisdiction in equity, to review, modify, amend or annul any ruling or order of the commission, but only to the extent of the unlawfulness of such ruling or order. The exercise of the said jurisdiction shall be had conformably to the provisions of section five of chapter twenty-five so far as applicable.

Section 14 (a) The commission shall not issue any certificate or written evidence to a person registered as broker or salesman other than a receipt in such form as it

may approve. Every registered salesman shall have such receipt upon his person and such receipt shall be shown upon demand to any officer authorized to make arrests and to any representative of the commission serving in the securities division but shall not be exhibited to any other person.

(b) The commission shall keep a register of brokers and salesmen properly indexed and open to the public. The registration by the commission of a person as broker or salesman shall, except for such receipt, take the form solely of entering the name of such person upon the register. Suspension or revocation of any registration by the commission shall be in the form of an order. Pursuant to any suspension or revocation, appropriate entry shall be made in the register against the registrant's name. Any subsequent action of the commission, altering the status of such person, shall likewise be entered in the register.

(c) The commission shall likewise keep a record of the mailing address of each registered person. Notice sent by mail to such person at such address by the commission shall be deemed sufficient notice to such person wherever a notice is required under the provisions of this chapter.

(d) All information received by the commission under this chapter concerning securities found by it to be fraudulent and all financial statements so received concerning any securities shall be kept open by the commission to public inspection at reasonable hours and the commission shall supply to the public copies of summaries of such information at charges equaling the cost of typing or printing. The commission may, however, place upon a separate file, not open to the public except upon its special order, any information which it deems in justice to the person filing the same or to any other person should not be made public.

Section 15 (a). All circulars, pamphlets or advertisements issued by a registered broker or salesman concerning any security, whether or not exempt under section four, shall bear the name under which he is registered together with his address and shall be dated. No person shall issue or procure the publication of any circular, pamphlet or advertisement, designed to promote the sale of any security not exempted under section four, within the commonwealth, unless such circular, pamphlet or advertisement is signed by such person and by all the persons contributing to the cost thereof with their respective addresses, and with a statement of their respective interests in such security or unless such circular, pamphlet or advertisement is signed by a registered broker in the name under which he is registered, and with his address, such registered broker being the person, or being one of a group of persons issuing or paying for such circular, pamphlet or advertisement. The commission may at any time require information showing compliance with the above provisions with respect to any circular, pamphlet or advertisement.

(b) No person shall in issuing or publishing any circular, pamphlet or advertisement designed to promote the sale of any security make any reference whatsoever to the fact that the provisions of this chapter have been complied with. Every circular, pamphlet or advertisement designed to promote the sale of any security, except securities exempt under section four (b), within the commonwealth shall contain, in a conspicuous place and form, the statement:—"The merits of any security as an investment are not passed upon by public authority under the Massachusetts Sale of Securities Act."

Section 16. No sale, not exempt under section three, of any security, not exempt under section four, shall be made at a dwelling other than the dwelling of the seller, but this shall not apply to the use of the telephone, telegraph or United States mails.

Section 17. A person shall not be excused from attending and testifying before the commission, acting under any provisions of this chapter, on the ground that his testimony or evidence, documentary or otherwise, may tend to criminate him or subject him to a penalty or forfeiture but, to the full extent necessary to render the above requirement lawful, such person shall not be prosecuted or subjected to a penalty or forfeiture for or on account of any action, matter or thing concerning which he may be required so to testify or produce evidence, except for perjury committed in such testimony.

Section 18 (a). The provisions of section four of chapter twenty-five shall, so far as applicable, apply to the proceedings under this chapter.

(b) The certificate of the commission over the signature of its secretary or its

assistant or administrative secretary shall be competent evidence, where otherwise admissible, in any court as to any act or finding of the commission under this chapter.

Section 19. Nothing in this chapter shall limit any statutory or common law right of any person to bring any action in any court for any act involved in the sale of a security; or the right of the commonwealth to punish any person for the violation of any law, except as provided in section seventeen. A sale of any security in violation of any provision of this chapter shall be voidable at the election of the purchaser.

Section 20. Whoever being required under this chapter to furnish any information, testimony or evidence under oath makes any wilfully false statement under such oath shall be guilty of perjury. Whoever violates any provision of this chapter shall be punished by a fine of not more than five thousand dollars or by imprisonment for not more than two and one-half years, or both. Any officer authorized to make arrests may arrest without a warrant and keep in custody, until he can be taken before a court having jurisdiction of such offence, any salesman selling or offering for sale a security who does not have in his possession a receipt issued to him under the provisions of section fourteen (a) or who does not exhibit such receipt to such officer upon demand. Every court shall upon request furnish to the commission an abstract of the record of the conviction of any person convicted of a violation of any provision of this chapter and of any registered broker or salesman convicted of a felony.

Section 21. If any provision of this chapter, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SECTION 2. This act shall not apply to sales, contracts, or agreements made prior to August 26, 1921, or be construed to prohibit the performance of any such contracts or agreements, either by the issuance of stock or otherwise, provided such contracts or agreements were valid and binding upon the parties thereto by the law as it existed at the time such contracts or agreements were made.

